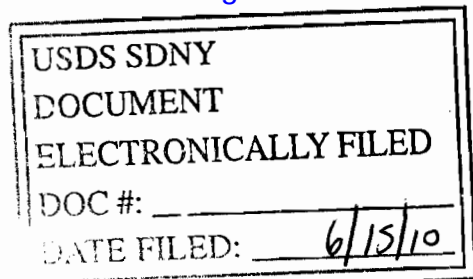


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



JUSTIN HARRIS,

Plaintiff,

-against-

08 Civ. 4837 (CM)(KNF)

CORRECTION OFFICER HOWARD #17721 and
THE CITY OF NEW YORK,

Defendants.
_____x

MEMORANDUM ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND THE COURT'S DECISION, OVERRULING PLAINTIFF'S OBJECTIONS, DISMISSING STATE LAW CLAIMS AGAINST THE CITY OF NEW YORK FOR FAILURE TO FILE A TIMELY NOTICE OF CLAIM, AND DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM AGAINST THE CITY

McMahon, J.:

The Court has received and reviewed the April 8, 2010 Report and Recommendation of the Hon. Kevin Nathaniel Fox, U.S.M.J., in which the learned Magistrate Judge, following a traverse hearing, concludes that the City was not timely served with a notice of claim, as required by New York General Municipal Law sections 50-e and 50-i.

I have also received a document from Mr. Harris, dated April 25, 2010, and denominated "MOTION TO WITH STAN. MOTION TO SERVE LATE NOTICE OF CLAIM AND B_E HERD BEFORE THE ABOVE MENTION." It appears to the Court that this document is in part in the nature of objections to the Magistrate Judge's conclusions, and in part a motion for leave to serve a late notice of claim against the City. I am treating it as an objection to the Magistrate Judge's conclusion.

I conclude that nothing in Mr. Harris's objections vitiates Judge Fox's conclusion that Mr. Harris did not serve his notice of claim on the City's comptroller in a timely manner, or his conclusion that Mr. Harris was not prevented from sending the notice of claim in a timely manner.

I adopt the learned Magistrate Judge's report as the Court's opinion.

Copies mailed/faxed/handed to counsel on 6/15/10

In view of this finding, the state law claims asserted by plaintiff against the City of New York must be dismissed. Since the federal claims have already been dismissed, the matter is dismissed in its entirety, and with prejudice, as against the City of New York.

Plaintiff cannot resurrect his state law claims against the City by obtaining permission to file a late notice of claim—at least, not by moving before this Court. A federal judge does not have the power to authorize the filing of a late notice of claim against the City of New York. See N.Y. Gen. Mun. Law, Art. 4, § 50-e(5); Brown v. Metro. Transp. Auth., 717 F. Supp. 257, 259-61 (S.D.N.Y.1989) (Sand, J.); Lipinski v. Skinner, 700 F.Supp. 637, 639-40 (N.D.N.Y.1988) (Munson, J.).


Therefore, I am constrained to DENY the motion for leave to serve a late notice of claim.

This disposes of the case insofar as it is brought against the City of New York. However, the action as against Correction Officer Howard survives.

The parties are reminded that pretrial orders, together with all other pretrial submissions required by the Court's rules, were due in this case on June 4, 2010, as detailed in the Civil Case Management Plan entered by this Court on October 30, 2009. The Court now grants both parties seven (7) days from today's date (i.e., until 5pm EDT on June 22, 2010) to file any outstanding documents with this Court. That is also the deadline by which the parties must provide courtesy copies of any such documents to this Court. If either party fails to do so, the Court will not hesitate to award sanctions.

This constitutes the decision and order of this Court.

Dated: June 14, 2010



U.S.D.J.

BY FIRST CLASS MAIL TO

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BY HAND TO MAGISTRATE JUDGE FOX